

1 SENATE BILL 76

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Lee S. Cotter

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10 AN ACT

11 RELATING TO TOURISM; ENACTING THE AGRITOURISM LIABILITY
12 LIMITATIONS ACT; PROVIDING IMMUNITY FROM LIABILITY FOR
13 AGRITOURISM PROFESSIONALS; PROVIDING EXCEPTIONS FROM IMMUNITY;
14 REQUIRING AGRITOURISM PROFESSIONALS TO POST WARNINGS ABOUT
15 AGRITOURISM ACTIVITIES.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Agritourism Liability Limitations Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Agritourism Liability Limitations Act:

22 A. "agritourism" means an industry that encourages
23 participants to visit agricultural operations that combine
24 tourism and local agriculture and that provide recreation,
25 entertainment or educational experiences for participants;

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1 B. "agritourism activity" means an activity carried
2 out on a farm or ranch that allows participants to observe or
3 participate in farm- and ranch-related activities, regardless
4 of whether a fee to observe or participate is paid, including:

- 5 (1) demonstration farming;
6 (2) harvest-your-own produce or Christmas tree
7 operations;
8 (3) corn mazes;
9 (4) petting and feeding zoos;
10 (5) hay rides;
11 (6) guest or dude ranches;
12 (7) agricultural museums;
13 (8) living history farms;
14 (9) farmers' markets located on farms and
15 ranches;
16 (10) wine tasting and winery tours;
17 (11) rural bed-and-breakfast operations;
18 (12) garden tours; and
19 (13) shows, fairs, competitions, rodeos,
20 performances or parades that involve agritourism activities;

21 C. "agritourism professional" means a
22 businessperson who provides agritourism activities, regardless
23 of whether the person receives compensation;

24 D. "inherent risks" means those dangers or
25 conditions that are an integral part of an agritourism

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1 activity, including certain hazards; surface and subsurface
2 conditions; natural conditions of land, vegetation and waters;
3 the behavior of wild or domestic animals; and ordinary dangers
4 of structures or equipment ordinarily used in farming and
5 ranching operations. "Inherent risks" includes the potential
6 of a participant to act in a negligent manner that might
7 contribute to injury to the participant or others, including
8 failing to follow instructions given by an agritourism
9 professional or failing to exercise reasonable caution while
10 engaging in the agritourism activity; and

11 E. "participant" means a person, other than the
12 agritourism professional, who engages in an agritourism
13 activity.

14 SECTION 3. [NEW MATERIAL] LIMITATION ON LIABILITY--
15 AFFIRMATIVE DEFENSE.--

16 A. An agritourism professional shall not be liable
17 for injury, loss or damage suffered by, or death of, a
18 participant that results from the inherent risks of agritourism
19 activities, so long as the agritourism professional has
20 complied with the provisions of the Agritourism Liability
21 Limitations Act.

22 B. A participant or participant's representative
23 may not make a claim against, maintain an action against or
24 recover from an agritourism professional for injury, loss,
25 damage or death of the participant that results exclusively

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1 from any of the inherent risks of agritourism activities.

2 C. In an action for damages against an agritourism
3 professional that relates to an agritourism activity, the
4 agritourism professional shall plead the affirmative defense of
5 the participant's assumption of the risk of agritourism
6 activities.

7 D. Nothing in the Agritourism Liability Limitations
8 Act shall be construed to prevent or limit the liability of the
9 agritourism professional who:

10 (1) commits an act or omission that
11 constitutes gross negligence or reckless or intentional
12 disregard for the safety of the participant and that act or
13 omission proximately causes injury, loss, damage or death to
14 the participant;

15 (2) intentionally causes injury, loss, damage
16 or death to a participant; or

17 (3) has actual knowledge or reasonably should
18 have known of a particular dangerous condition on the land,
19 facilities or equipment or of the dangerous propensity of a
20 particular animal used in the agritourism activity and does not
21 make the particular danger known to the participant and the
22 particular danger proximately causes injury, loss, damage or
23 death to the participant.

24 E. The limitations on liability provided by the
25 Agritourism Liability Limitations Act are in addition to all

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1 other limitations of liability otherwise provided by law.

2 SECTION 4. [NEW MATERIAL] POSTING REQUIREMENTS.--

3 A. An agritourism professional shall post and
4 maintain signs that contain the warning notice provided in
5 Subsection C of this section. The sign shall be placed in a
6 clearly visible location at the entrance to the agritourism
7 location and at the site of all agritourism activities. The
8 warning notice shall consist of a sign printed using black
9 letters, with each letter to be a minimum of one inch in
10 height.

11 B. A written contract entered into by an
12 agritourism professional for the provision of professional
13 services or instruction or for the rental of equipment to a
14 participant, whether the contract involves agritourism
15 activities on or off the agritourism location or at the site of
16 the agritourism activity, shall contain in clearly readable
17 print the warning notice specified in Subsection C of this
18 section.

19 C. The signs and contracts described in Subsections
20 A and B of this section must contain the following notice:

21 "WARNING

22 Pursuant to New Mexico law, there is no liability for an
23 injury to or death of a participant in an agritourism activity
24 conducted at this agritourism location if such injury or death
25 results from the inherent risks of the agritourism activity.

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1 Inherent risks of agritourism activities include: risks of
2 injury inherent to land, equipment and animals, as well as the
3 potential for you to act in a negligent manner that might
4 contribute to your injury or death. You are assuming the risk
5 of participating in this agritourism activity."

6 D. Failure to comply with the Agritourism Liability
7 Limitations Act and the posting requirements provided in this
8 section shall prevent an agritourism professional from invoking
9 the limitations on liability provided by the Agritourism
10 Liability Limitations Act.

11 SECTION 5. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2015.